

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.1293 of 2016

ORDER:

Heard arguments of Sri S.Krishna Sarma, learned counsel for petitioner/plaintiff and Sri V.Raghu, learned counsel for respondents/defendants and with their consent the CRP is disposed of at the admission stage.

2) Through the impugned order dt.30.12.2015 in I.A.No.1093 of 2015 in O.S.No.391 of 2010 which is now being challenged in the CRP, learned Senior Civil Judge, Khammam dismissed the petition of revision petitioner/plaintiff filed under Order VI Rule 17 CPC seeking permission to amend the plaint schedule boundaries while accepting the contention of the respondents/defendants that in spite of their specific contention in para-17 of the written statement to the effect that the plaint schedule boundaries were incorrect and instead, the correct boundaries were as mentioned in the written statement and further, the amendment petition was filed at a belated stage when the main suit was coming up for arguments and hence the petition was against the spirit of Order VI Rule 17 CPC which mandates that no application for amendment should be allowed after the trial had commenced, unless the Court comes to the conclusion that in spite of due diligence, petitioner could not have filed the petition before the commencement of trial.

3) Learned counsel for petitioner would submit that the reason for delay in filing the amendment petition was that while the matter came up for arguments, he was going through the documents and realized that plaint schedule boundaries were incorrectly mentioned due to typographical error and the delay was not willful and unless the petition was allowed and plaintiff was permitted to amend the schedule, he would face hardship while executing the decree, if he succeeds in the suit. He relied upon the following decisions on the proposition that delay could be excused on the consideration that plaintiff would face difficulty in execution of decree if he were to succeed in the suit.

1. Sajjan Kumar vs. Ram Kishan¹

2. Usha Devi vs. Rijwan Ahamd and others²

3) Per contra, learned counsel for respondents/defendants while vehemently opposing the petition would contend that in spite of respondents pointing out defects in plaint schedule boundaries in the written statement and also during trial, the petitioner/plaintiff did not show any diligence in filing amendment petition and it was only when the matter was posted for arguments he filed such a petition and therefore at this belated stage his request cannot be considered. He submitted that the trial Court was right in dismissing the petition. He cited the following decisions.

¹ (20015) 13 SCC 89

² AIR 2008 SC 1147

1. *Narne Estates (P) Ltd. Secunderabad vs. N.Gopal Naidu and others*³
2. *Ajendraprasadji N.Pandey and another vs. Swami Keshvprakeshdasji N. and others*⁴
3. *Ayesha Rizwana vs. Mushtaq Ahmed*⁵
4. *Rodda Narsaiah vs. Adla Raju @ Rajaiah*⁶
5. *J.Samuel and others vs. Gattu Mahesh and others*⁷
6. *Nimmakayala Seetha vs. Kothapalli Ramesh Kumar and another*⁸
7. *Chappidi Satyanarayanamma and another vs. Chappidi Dhanalakshmi and others*⁹

4) In the light of above rival arguments, the point for determination is:

“Whether there are merits in this CRP to allow?”

5) **POINT:** Admittedly, the petitioner has not sought for amendment of the plaint schedule boundaries till the matter was posted for arguments in spite of the fact that defendants highlighted the mistakes in the boundaries in para-17 of the written statement and also during trial.

a) The Honourable Apex Court in *Sajjan Kumar*'s case (1 supra), in similar circumstances, weighed the concerned petitioner's lack of diligence on one hand and complications that he may have to face in execution of the decree due to incorrect description of the boundaries, if he ultimately succeeds in the suit on the other, and allowed the amendment petition by imposing costs. In a subsequent decision in *Usha Devi*'s case (2 supra) the Apex Court relied upon *Sajjan Kumar*.

³ 2011 (5) ALD 445

⁴ (2006) 12 SCC 1

⁵ 2013 (6) ALD 115

⁶ 2013 (5) ALD 37

⁷ (2012) 2 SCC 300

⁸ 2015 (2) ALD 730

⁹ 2014 (5) ALT 774

b) In my considered view, the above decisions would squarely apply to the case on hand. Considering the fact that it is a suit for partition and if the plaintiff were to succeed ultimately, he would face difficulty during execution of the decree due to incorrect boundaries, I am inclined to allow the CRP. In view of the judgment of three Judges Bench in *Sajjan Kumar* (1 supra), I am unable to follow the judgments cited by respondents/defendants.

6) Accordingly, the revision petition is allowed and impugned order dated 30.12.2015 in I.A.No.1093 of 2015 in O.S.No.391 of 2010 is set aside and revision petitioner/plaintiff is permitted to amend the plaint schedule as prayed for in I.A.No.1093 of 2015 on payment of costs of Rs.500/- (Rupees five hundred only) to the District Legal Services Authority, Khammam within two weeks from the date of this order failing which the order shall be deemed cancelled. Upon such amendment, the trial Court shall give an opportunity to the respondents/defendants to file additional written statement if they propose and dispose of the suit on merits. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE U.DURGA PRASAD RAO

Dt: 17.09.2016
Murthy